IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1092 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANTOSH NAMDEV SALUKE

Versus

STATE OF GUJARAT

Appearance:
MR BS SUPEHIA for Appellant
MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was charged with killing his wife by giving axe blows at sometime before 7 o'clock in the evening on 4th December, 1992 in Ambedkar Nagar, Vijalpore. He was tried by the learned Sessions Judge, Valsad in Sessions Case No.27 of 1993 who found him guilty of the offence charged and sentenced the appellant to imprisonment for life and a fine of Rs.1,000/-.

2. There were no eye-witnesses. The prosecution case was based on circumstantial evidence.

3. The deceased Pamiben was the wife of the appellant Santosh Namdev. It appears from the evidence that they belong to some place in Maharashtra but they were staying at village Vijalpore, Taluka Navsari for their livelihood. They had one son, aged about 8 years, who was not living with them but was living in their native place. The parties belong to Harijan community.

4. The first witness on behalf of the prosecution is Sahebrao Anandrao. The appellant is his wife's brother. According to him, the appellant had been previously married to one Sushilaben but, after divorce, he had married Pamiben. The appellant and his wife were living together. On the day of the incident, he was at home and he had sent his wife to the appellant's place to get `Tagara'. She came back scared and told him that the appellant's wife was dead. He and his wife went near the house of the appellant and when they opened the door slightly, they saw the appellant's wife who appeared to be dead. Then a crowd collected and he went to the police station. The police sent him back to verify again but when he went back to the appellant's house, the Inspector had already arrived. He then gave the complaint to the police. According to him, the appellant and his wife were on good terms. There were no disputes between them.

5. P.W.2 Sushilaben, the neighbour of the appellant, has also given similar evidence. However, what is important to note is that she had seen the accused leaving the house in the evening on the previous day. It is true that in examination-in-chief she said that she had seen the appellant leaving at 4 o'clock while in cross-examination, she said that she had seen the appellant leaving at 7 o'clock. However, in our opinion, this difference in time is not material in the circumstances of the case because the witness may not remember the exact time. It is also important to note that, according to her, when the accused left, he was

also carrying a bag in his hand. She did not support the prosecution on other aspects and she was declared hostile.

6. Induben Sahebrao (P.W.3) is the sister of the appellant and wife of the witness Sahebrao. Her evidence is also similar to that of Sahebrao and it was she who first went to the house of the appellant at about 8 o'clock in the morning and found Pamiben dead. In cross-examination, she said that the appellant had never made any complaint against his wife and they were carrying on well. It emerges from her evidence that, after the incident, the appellant did not return and did not attend the funeral ceremony.

7. Nirmalaben Madhubhai (P.W.4) was declared hostile since she did not support the prosecution case that the appellant made an extra-judicial confession before her. However, she admitted that the appellant had come to her house with a bag in his hand and left leaving the bag with her. She also said that the police had come to collect the bag. When she was cross-examined by the A.P.P., she admitted that when the bag was opened, a towel was found though she said that she did not know whether it was stained with blood or not. But she admitted that the police had seized the towel in the presence of the Panchas and it was the same as the Muddamal towel.

8. The prosecution case was that the blood-stained towel was put in a bag and the bag was recovered from the residence of Nirmalaben at the instance of the appellant. P.W.5 Jerambhai Harisingh who was the Panch witness initially did not support the prosecution but when the panchnama was read over to him, he admitted that the facts stated in the panchnama were correct and said that the towel which was recovered was the same as the Muddamal towel and that it appeared to be blood-stained. It is also the prosecution case that an axe was found near the dead body of Bai Pami though Dahyabhai Durlabhbhai (P.W.6) who was the Panch witness did not support the prosecution.

9. Investigating Officer Babulal Virjibhai Ramani did say in his evidence that an axe was recovered from the place of the incident and there is no reason to disbelieve his evidence.

10. The evidence of Dr. Anilkumar Nayak (P.W.7), who carried out the post-mortem, shows that there were as many as four incised wounds on the neck and one injury on

the right ear and the death was due to multiple injuries over the neck. He also states in his evidence that after the first blow on the neck, the victim could not have given a cry. Thus, the medical evidence clearly shows that the death was homicidal and it was not disputed. His evidence also goes to show that injuries could have been caused by the axe which was found near the dead body of the deceased.

11. P.W.8 Vasudev Amritrao is an important witness for the prosecution. Pamiben was his elder sister. According to him, he and the appellant had been living in Ambedkar Nagar, Vijalpore for the last 10 years. He stated that the appellant used to beat his wife saying that she was not faithful and he also suspected her character. His sister used to go back to her father's place in Maharashtra when such quarrels took place but then the appellant used to go and persuade her to return. Even 7 to 8 days before, the appellant had told him that he wanted to send away his wife to her father's place since she was sick.

12. The Forensic Science Laboratory report shows that human blood of the same group was found on the accused, clothes of the deceased, the axe and the towel which was recovered at the instance of the appellant.

13. Thus, from the above evidence, the following circumstances are established:

(i) The appellant and his wife were living together and no one else was living with them.

(ii) The appellant left his house in the evening on the previous day with a bag in his hand and which he left at the place of Nirmalaben and went away. A towel was found from the said bag which was blood-stained and the blood was found of the same group as that of the deceased. The evidence of Vasudev Amritrao shows that the appellant suspected the character of his wife and he used to beat her.

(iii) The appellant, after leaving, did not come back and did not attend the funeral ceremony of his wife.

(iv) An axe was found near the dead body of

the deceased and medical evidence shows that injuries could have been inflicted with it and that it was also stained with blood of the same group as that of the deceased.

14. The learned counsel for the appellant submitted that Vasudev Amritrao was the brother of the deceased and he was an interested witness. He submitted that the witness Sahebrao who was the brother-in-law of the appellant and his wife Induben have stated that the appellant and his wife had no disputes and they were on good terms. However, the learned Sessions Judge, in para 19 of his judgment, has made comments on the demeanour of these two witnesses and he has observed that their behaviour in the witness-box indicated that for some reason, they wanted to take the side of the appellant. In the circumstances, the learned Sessions Judge has rightly preferred to accept the evidence of Vasudev Amritrao who was the brother of the deceased and who stated that the appellant used to suspect the character of his wife and beat her.

15. The learned counsel for the appellant stated that the prosecution has not examined the son who could have thrown light on the relation between his parents. The son was not living with the parents and we do not think that non-examination of the son is fatal to the present case when we believe the evidence of Vasudev Amritrao.

16. In our opinion, the circumstances which have been established by the prosecution case, as outlined above, form a complete chain and the only inference that can be drawn is that it was the appellant who had killed his wife and the circumstances are inconsistent with any hypothesis except that of the guilt of the appellant. We are, therefore, satisfied that the learned Sessions Judge has rightly found the appellant guilty of killing his wife. There is no substance in the appeal and the same is dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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